

**ASSEMBLY BILL**

**No. 178**

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**Introduced by Assembly Members Skinner and Charles Calderon**

February 2, 2009

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An act to amend Section 6203 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 178, as introduced, Skinner. Sales and use taxes.

The Sales and Use Tax Law imposes a tax on the gross receipts from the sale in this state of, or the storage, use, or other consumption in this state of, tangible personal property. That law imposes the sales tax upon “retailers,” and defines a “retailer engaged in business in this state” to include specified entities. Existing law also provides that every retailer engaged in business in this state and making sales of tangible personal property for storage, use, or other consumption in this state, that engages in specified activities in this state shall, at the time of sale or at the time the storage, use, or other consumption becomes taxable, collect the tax from the purchaser.

This bill would include in the definition of a “retailer engaging in business in this state” a retailer entering into an agreement with a resident of this state under which the resident, for a commission or other consideration, directly or indirectly refers potential customers, whether by a link or an Internet Web site or otherwise, to the retailer, if the cumulative gross receipts or sales price from sales by the retailer to customers in this state who are referred pursuant to these agreements is in excess of \$10,000 during the preceding 4 calendar quarterly periods, except as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 6203 of the Revenue and Taxation Code  
2     is amended to read:  
3     6203. (a) Except as provided by Sections 6292 and 6293, every  
4     retailer engaged in business in this state and making sales of  
5     tangible personal property for storage, use, or other consumption  
6     in this state, not exempted under Chapter 3.5 (commencing with  
7     Section 6271) or Chapter 4 (commencing with Section 6351),  
8     shall, at the time of making the sales or, if the storage, use, or other  
9     consumption of the tangible personal property is not then taxable  
10    hereunder, at the time the storage, use, or other consumption  
11    becomes taxable, collect the tax from the purchaser and give to  
12    the purchaser a receipt therefor in the manner and form prescribed  
13    by the board.  
14    (b) As respects leases constituting sales of tangible personal  
15    property, the tax shall be collected from the lessee at the time  
16    amounts are paid by the lessee under the lease.  
17    (c) “Retailer engaged in business in this state” as used in this  
18    section and Section 6202 means and includes any of the following:  
19    (1) Any retailer maintaining, occupying, or using, permanently  
20    or temporarily, directly or indirectly, or through a subsidiary, or  
21    agent, by whatever name called, an office, place of distribution,  
22    sales or sample room or place, warehouse or storage place, or other  
23    place of business.  
24    (2) Any retailer having any representative, agent, salesperson,  
25    cannasser, independent contractor, or solicitor operating in this  
26    state under the authority of the retailer or its subsidiary for the  
27    purpose of selling, delivering, installing, assembling, or the taking  
28    of orders for any tangible personal property.  
29    (3) As respects a lease, any retailer deriving rentals from a lease  
30    of tangible personal property situated in this state.  
31    (4) (A) Any retailer soliciting orders for tangible personal  
32    property by mail if the solicitations are substantial and recurring  
33    and if the retailer benefits from any banking, financing, debt  
34    collection, telecommunication, or marketing activities occurring

1 in this state or benefits from the location in this state of authorized  
2 installation, servicing, or repair facilities.

3 (B) This paragraph shall become operative upon the enactment  
4 of any congressional act that authorizes states to compel the  
5 collection of state sales and use taxes by out-of-state retailers.

6 *(5) Any retailer entering into an agreement with a resident of*  
7 *this state under which the resident, for a commission or other*  
8 *consideration, directly or indirectly refers potential customers of*  
9 *tangible personal property, whether by a link or an Internet Web*  
10 *site or otherwise, to the retailer, if the cumulative gross receipts*  
11 *or sales price from sales by the retailer to customers in this state*  
12 *who are referred pursuant to these agreements is in excess of ten*  
13 *thousand dollars (\$10,000) during the preceding four calendar*  
14 *quarterly periods. This paragraph shall not apply if the retailer*  
15 *can demonstrate that the resident with whom the retailer has an*  
16 *agreement did not engage in referrals in the state on behalf of the*  
17 *retailer that would satisfy the requirements of the commerce clause*  
18 *of the United States Constitution during the four quarterly periods*  
19 *in question.*

20 ~~(5)~~

21 (6) Notwithstanding Section 7262, a retailer specified in  
22 paragraph (4) above, and not specified in paragraph (1), (2), or (3)  
23 above, is a “retailer engaged in business in this state” for the  
24 purposes of this part and Part 1.5 (commencing with Section 7200)  
25 only.

26 (d) (1) For purposes of this section, “engaged in business in  
27 this state” does not include the taking of orders from customers in  
28 this state through a computer telecommunications network located  
29 in this state which is not directly or indirectly owned by the retailer  
30 when the orders result from the electronic display of products on  
31 that same network. The exclusion provided by this subdivision  
32 shall apply only to a computer telecommunications network that  
33 consists substantially of online communications services other  
34 than the displaying and taking of orders for products.

35 (2) This subdivision shall become inoperative upon the operative  
36 date of provisions of a congressional act that authorize states to  
37 compel the collection of state sales and use taxes by out-of-state  
38 retailers.

39 (e) Except as provided in this subdivision, a retailer is not a  
40 “retailer engaged in business in this state” under paragraph (2) of

1 subdivision (c) if that retailer's sole physical presence in this state  
2 is to engage in convention and trade show activities as described  
3 in Section 513(d)(3)(A) of the Internal Revenue Code, and if the  
4 retailer, including any of his or her representatives, agents,  
5 salespersons, canvassers, independent contractors, or solicitors,  
6 does not engage in those convention and trade show activities for  
7 more than 15 days, in whole or in part, in this state during any  
8 12-month period and did not derive more than one hundred  
9 thousand dollars (\$100,000) of net income from those activities  
10 in this state during the prior calendar year. Notwithstanding the  
11 preceding sentence, a retailer engaging in convention and trade  
12 show activities, as described in Section 513(d)(3)(A) of the Internal  
13 Revenue Code, is a "retailer engaged in business in this state," and  
14 is liable for collection of the applicable use tax, with respect to  
15 any sale of tangible personal property occurring at the convention  
16 and trade show activities and with respect to any sale of tangible  
17 personal property made pursuant to an order taken at or during  
18 those convention and trade show activities.

19 (f) Any limitations created by this section upon the definition  
20 of "retailer engaged in business in this state" shall only apply for  
21 purposes of tax liability under this code. Nothing in this section is  
22 intended to affect or limit, in any way, civil liability or jurisdiction  
23 under Section 410.10 of the Code of Civil Procedure.